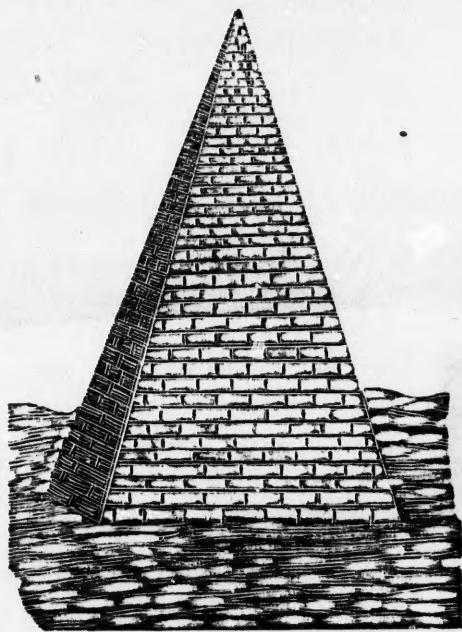




Ma force est ma droiture.



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THE
REMONSTRANCE

OF

MR. JOHN BAPTISTE LAPORTE,

BEING

AN EXPLANATORY REFUTATION OF THE GROUNDS OF OPINION CONTAINED IN THE
REPORT OF A COMMITTEE OF THE EXECUTIVE COUNCIL,
OF THE 26TH OF SEPTEMBER, 1843,

IN REFERENCE TO

THE BEACH LOT AT L'ANSE DES MERES;

AND ALSO,

BEING A VINDICATION OF THE RIGHTS, AND IN SUPPORT OF THE CLAIMS OF THE
ABOVE-NAMED INDIVIDUAL, UPON HER MAJESTY'S GOVERNMENT
TO THE BEACH LOT IN QUESTION.

QUEBEC:

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1843.



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To the Right Honorable Sir CHARLES THEOPHILUS METCALFE,
Baronet, Knight Grand Cross of the Most Honorable Order
of the Bath, one of Her Majesty's most Honorable Privy
Council, Governor General of British North America, and
Captain General and Governor in Chief in and over the
Provinces of Canada, Nova Scotia, New Brunswick, and
the Island of Prince Edward, and Vice Admiral of the same.

The present Remonstrance, made on the part of Mr. Jean Baptiste Laporte, and by him offered as an explanatory refutation of the grounds of opinion entertained by the Honorable Committee of the Executive Council, who framed the Report of the twenty-sixth of September last, in reference to the Beach Lot at *L'anse des Meres*, and as a vindication of the rights and claims of that individual upon Government to the property in question, is most humbly and respectfully submitted for consideration.

It is presumed it will be conceded, as an admissible principle of justice, that it is materially essential to the right understanding of the merits of a case, that no misapprehension of facts, or erroneous statements should exist, in order to arrive at conclusions favourable to the ends of justice; such being undoubtedly an object of paramount importance in any case, but particularly so in the present one, where, not only the *honor* and *good faith* of the Crown, but also the rescinding of a solemn pledge—nay more, of a binding and *bona fide* contract of sale, made and concluded between Government and Mr. J. B. Laporte, are brought into question.

By the medium of this Remonstrance would Mr. Laporte then, in the first place, instance the assertion made by Mr. William Lampson, in the Petition addressed in the name of the Ursuline Nuns to the House of Assembly, at the last Session of the Legislature, as constituting a subject matter of complaint, namely, "of an undue preference having been given by Government over them to Mr. J. B. Laporte, with reference to the grant of the Beach lot at *L'anse des Meres*,"—a statement, as will be seen, not in unison with truth nor in accordance with facts, such matter never having been in question; but, on the contrary, a most prolonged and obstinate judicial contest as to the right of property in the said Beach-lot having been during a period of thirteen years, most pertinaciously and vigorously maintained by these parties with the Crown. However, upon this fictitious and erroneous ground of complaint has the abovenamed William Lampson, (because none other party can Government now consistently recognize, seeing that the Ursuline Nuns, by a disposal of their claims to the Messrs. Frasers, and by the latter to William Lampson, have not only alienated but divested themselves of all legal and equitable rights which they, at one time, may have pretended to the said property, if any such ever existed,) succeeded, with the borrowed name of these Religious ladies, in preventing the original intentions of the Crown, in favour of Laporte, from being carried into effect for the present.

The Honorable Committee, in their Report, have deemed it advisable to refer briefly to the Report of the Executive Council, during the administration of the late Lord Sydenham, dated of the eleventh of May, 1841, as exhibiting to what extent the Crown had pledged itself to Laporte in regard of the Beach Lot at *L'anse des Meres*, without also considering that so far back as the year 1827, Government had, upon the memorial of that individual, praying for a permanent grant of the said Beach-lot, and the same signed by numerous old and respectable citizens of Quebec, certifying as to the merits of his application, directed Sir James Stuart, Bart., the present Chief Justice of the late Province of Lower Canada for the District of Quebec, (then Attorney General, and acknowledged to be one of the most eminent lawyers in the Province,) to give his opinion and report upon the same; and whence originated, upon his advice, the institution of the petitory action (*action petitoire*) of the Crown against Laporte—amicably indeed as

against him, but *legally* as against the Ursuline Nuns, the latter being called in by Laporte, the Defendant in the suit, to intervene in the cause, for the express purpose of having the question then at issue, and the only real one in the case—that of *ownership*—decided between them and the Crown.

It is, therefore, from this distant period that Laporte relied with implicit confidence upon the understanding then entered into with the Crown, and in virtue whereof he has since been called upon in his character of Tenant, to pay, and did pay, to Government all arrears of Rent for the period of eight years, although he did not receive any portion of the rents in question from the subtenants themselves.

The whole of the proceedings in this cause, and the various binding agreements and compacts subsequently made between Government and Laporte, as the original discoverer, the same varying in their tenor and application, but, as matters progressed, becoming more obligatory upon the Crown in effectually securing the interests of Laporte, constituting him at one time a tenant of the Crown, and as such demanding and receiving rents from him,—next directing him as a lessee to accept of an emphyteotic lease, and finally concluding with him, in the character of vendee, a solemn and binding contract—no less than a sale of the Beach-lot in question, complete and perfect in all legal requisites;—all these facts it is represented most unanswerably and convincingly establish the assertion above made, and show how and under what circumstances the pledge was given, and finally ratified by the Crown.

The whole of the Orders in Council, in consequence, from the year 1827, in reference to the said Beach-lot, up to the last order of the Executive Council of the 13th of December, 1841, as regards this transaction between Government and Laporte, were, and are in their disposition and character, in continuation of and as a confirmation to the latter of the understanding and agreement made as above stated.

The Honorable Committee have thought proper in their Report to remark “that the very name *L'anse des Meres* is indicative of the said Beach-lot being the property of the Ursuline Nuns, that their title was never questioned until 1827, and had been in their possession for a century.”—It is, however, no less true that *L'anse des Meres*, as a name of designation to the property in question, has been, and is an obsolete appellation, and that the locality is generally and publicly known as “Cap Blanc,” or the White Cape. The assertion also that the title of the Nuns never had been disputed until the year 1827, and that they had been in possession for the period of a century of the *actual locality*, has already been matter of consideration for Courts of Justice; and, although these pretensions, in every variety of legal shape and argumentative form, have been urged before these tribunals, every way competent to decide upon their merits,—yet, have the decisions, both as to law and fact, been in favour of the Crown, and adverse to such pretensions.*

The Honorable Committee have been pleased further to observe, that Laporte instigated the bringing of the said Petitory action, upon the grounds of his having been disappointed in his expectation of obtaining a renewal of his lease from the Ursuline Nuns. Now, that this is altogether a gratuitous and erroneous supposition, is evident from the fact that the lease in question did not expire until the year 1833, a period of eleven years afterwards, but on the contrary, the right and expediency at the time of religious bodies, *Gens de main morte*, leasing out beach lots having been considerably bruited and questioned, the right of proprietorship therein being supposed to be vested in the Crown, the question finally came under the serious consideration of the Government, as above stated, and was ultimately referred to the legal tribunals of the country for investigation and decision, as being the most equitable and judicious mode of terminating all doubts and difficulties upon the subject.†

* *L'anse des Meres* in fact as a name being applicable to a spot nearer Quebec than the locality in question, and which last is both specially and publicly known by the appellation of *Cap Blanc* as above stated. The assertion made that the Nuns were in possession for a century is an erroneous statement, and untrue. The possession of the Nuns commenced by an act of ownership in 1808, by a lease to Mr. Coltman, 76 years after the passing of their title, which the Courts have declared did not give it them, and only 19 years before suit brought.

† As to the truth of this statement, reference might be craved to Sir James Stuart, Chief Justice in and for the District of Quebec; the same being to his personal knowledge, when acting at that period in his capacity of Attorney General, as already mentioned.

The Honorable Committee have also, in their Report, expressed strong doubts as to the question of the large outlays made by Mr. Laporte entitling him to any consideration for the same from Government, inasmuch as the improvements made were to revert back at the expiration of the lease to the Ursuline Nuns, and that the property itself, annually enhancing in value, would well repay such expenditure.

But is this latter allegation correct?—On the contrary, has not the situation of Laporte, during this long pending business, become more critical and embarrassing in every point of view, as well pecuniary as otherwise; the truth being that, although large sums of money have been expended by him in converting a barren beach into a habitable spot, yet, in consequence of the delays arising from these conflicting interests, have the means of Laporte been most ruinously affected.

In the above Report, the Honorable Committee have also questioned the value and importance to the Crown of the information given by Laporte, as the original discoverer; and in doing so have apparently based their opinion upon a statement so at variance with the actual facts, as to render it essentially necessary to a true understanding of the case to insert a quotation therefrom in the present Remonstrance, and which is as follows:—

“To judge of the claim, it is proper to ascertain whether the information upon which it is founded was of any value or importance to the Crown. Whatever may have been its value on the 7th March, 1839, when the Report of the Lower Canada Council was made, it became of no value whatever on the 30th July, 1840, when the judgment of the Court of King’s Bench was reversed in Appeal, and the Nuns, and not the Crown, were declared to be the proprietors of the beach up to highwater mark.”

“The judgment in appeal, which the Crown has not sought to disturb, leaves the Nuns precisely where they stood in 1827, as to the *ownership up to highwater mark*; and all that the Crown obtained by the suit was the interval below this, subject to the right of pre-emption of the Ursulines.”

That the above statement is incorrect in every particular, will at once be seen by a reference to the language and tenor of the judgments themselves. How, therefore, the assertion that by the decision of the Court of Appeals “*the Nuns, and not the Crown, were declared to be the proprietors of the beach up to highwater mark*,” and, furthermore, that by such decision “*the Nuns were precisely where they stood in 1827, as to the ownership up to highwater mark*,” could be made, and introduced into the body of the Report of the Honorable Committee, not only as being a statement well founded in fact and in truth, but also as a basis upon which reasons have been assigned, arguments advanced, and conclusions deduced, which in their practical results would operate immeasurably to the disadvantage of the interests of Laporte, is, it is suggested, both extraordinary and unaccountable.

The judgment rendered in the Court of Appeals will, upon a perusal, be found to differ but in one respect from that of the decision given by the Court of King’s Bench—that is as to the actual line of highwater mark. The latter named tribunal having completely set aside the blue line laid down in William Sax’s plan, and declared the cliff to be the actual line of highwater mark; and of which blue line, a Report of a *Committee of the whole Council*, dated the 11th May, 1841, and approved of by the late Lord Sydenham, then Governor General, in Council of the 11th June, 1841, in alluding to the judgment of the Court of Appeals, and the line of highwater mark in the plan of Mr. Saxe, states it to be “a line in fact below the true highwater mark made, and not intended to establish its exact locality, or supported in the proceedings by any evidence showing that it was a true line ascertained by actual survey.”

The Court of Appeals, on the other hand, by its Judgment was altogether guided

* Countless affidavits could be produced to establish that the blue line made by Mr. Saxe, as constituting highwater mark, is both unreasonable and absurd; and this was understood to be the formed opinion of certain Honorable Members of the Executive Council, who visited the locality in 1841. The waters, even at the present time, rising in defiance of the obstacles now in their way, far beyond the blue line in question.

as to the actual line of highwater mark, by the blue line described in the plan of Mr. Saxe, and of the singularity of which the Report in Council of the late Lord Sydenham speaks, as above quoted. The two abovenamed Judgments, however, in every other respect are one and the same in substance and effect. Our Sovereign Lady, the Queen, being declared by both of these decisions to be the *proprietor* of the said Beach *from low-water mark up to high-water mark*; with this difference, that the decision of the Court of Appeals, as a higher tribunal, limited the high-water mark to the blue line in question.

It may here be observed, that the Judgment of the Court of King's Bench enters fully into an investigation of the titles of the Ursuline Nuns; and declares "that the Beach lot at *L'anse des Meres* forms no part or portion of the ground sold by one Duquet to these Religious ladies." On the other hand, the Judgment of the Court of Appeals apparently evades the taking of such question into consideration; and is satisfied "as to their legality, by remarking "that the Nuns held under titles which it was not "the object of the Information to try."*

In investigating the question of the value and importance to Government of the discovery and consequent information of Laporte, the same, it is to be presumed, will not most assuredly be considered in a restrictive sense; but if examined in a just, equitable, and liberal point of view, then the answer is self-evident--inasmuch as, not only from the period that the point in controversy as to the right of *ownership* of Beach lots upon this original information was determined, by the said Judgment of the Court of King's Bench, to be vested in the Crown, did all difficulties cease to exist as to *ownership* in respect to Beaches in general on the River St. Lawrence all doubts on the contrary on the subject being peremptorily silenced, but likewise have innumerable Letters Patent from that period for beach lots similarly situated, as property within the Royal domain been granted by the Crown to divers of her Majesty's subjects, from the river St. Charles to the uppermost Coves in the harbour and port of Quebec, and on both sides north and south of the River St. Lawrence.

Undoubtedly the valuable result of the discoveries in question to Government has been the daily increase of an item of no small importance in Her Majesty's revenues, seeing that, previous to this event, the Beaches in the River St. Lawrence were not recognized as forming part and portion of the Royal domain, or from which any revenues were to be derived by the Crown.

But even viewing the question of the importance and value to Government of the discovery and information of Laporte in the most possible limited sense, undoubtedly, no reliance is to be placed in the assertion made in the Report of the Honorable Committee "That, whatever may have been *its value on the 7th March, 1839*, when the Report of the Lower Canada Council was made, *it became of no value whatever on the 30th July, 1840*, when the judgment of the Court of King's Bench was reversed in Appeal, and "the Nuns, and not the Crown, declared to be the proprietors up to highwater mark." And also that that judgment, never having been disturbed, leaves the Nuns *precisely* "where they stood in 1827 as to the *ownership* up to highwater mark." Inasmuch as this is a statement, it is to be borne in mind, already shown to be differing in every essential respect from the language, meaning, and intent of the judgment in question, and is not only erroneous and defective in every point of view, but, furthermore, at variance with the actual facts of the case; and cannot, therefore, in common justice to Laporte, be received as a criterion by which any fair or reasonable conclusions could be arrived at, in regard to a proper and just estimation of the value alike of the discovery and information obtained from the latter individual.

The decision of the Court of Appeals in fact, as already explained, only differing from the judgment of the Court of King's Bench as to the exact line of highwater mark, and the beach being, by the former sentence or judgment, declared to be *up to highwater*

* It having been judicially ruled and decided that the object of the information filed on the part of the Crown was not for the purpose of trying the titles of its adversaries, but of deciding the only real question at issue, the ownership of the Beach whence the necessity of the investigation and inquiry made of the same by the Honorable Committee, particularly as no new fact or matter has been elicited, and the original question already determined by the tribunals of the country.

mark the property of the Crown; the consequence is that the real and intrinsic value of the said Beach lot was, and is substantially, as great to Government as it was on the 7th March, 1839; the narrow strip of land in rear of the blue line being, comparatively speaking, of no value, at least to the Crown, and to which no importance could be attached as forming an integral portion of Her Majesty's Domain—the beach *up* to highwater mark being the property of the Crown, and as such conceded, as above stated, to Laporte, whose acceptance of the same, upon the valuation of the Commissioner of Crown Lands, was made in conformity to the express requisition of Government.

The Honorable Committee have, in their Report, made certain observations upon the Reports of the Inspector General of the Queen's Domain; and although no new facts or inferences have, as a consequence, transpired or been elicited, yet are their opinions on the subject wholly different from those held by that officer.

No communication of the Report of the Inspector General having ever been given to Mr. Laporte, and he having only for the first time had communication of these extracts, whereby the necessary information to enable him to judge of their merits is wanting; the liberty is here used of remarking, as not out of character, that the Honorable Committee, in awarding the praise which is undoubtedly due to the Inspector General of Her Majesty's Domain for the labour, diligence, and research displayed by him in his Reports upon these matters, should, under circumstances, have gone a step further, and as an appropriate act both of justice to Laporte and of courtesy to a public officer, requested at his hands, upon communication being made to him of the present Report, certain explanatory observations relative to the assumed discoveries made in the titles of the representatives of the Nuns, and which it is remarked so singularly escaped the notice of the Inspector General.

In adverting to the several observations made by the Honorable Committee upon the Reports of the Inspector General, it is a fact sufficiently noticeable, that no mention is made by them of the Reports of Her Majesty's Attorney General on the subject; although such were undoubtedly made, and were, it is supposed in their import, confirmatory of the right of Laporte, and in support of his claims upon Government.

The remark made by the Honorable Committee upon the boundaries of the lands of the Nuns, as held under deed from D'Artigny, in virtue of which they were bounded by the river St. Lawrence, (supposing this to be considered as an alleged fact in support of Riparian rights—but which is not admitted) cannot be said to apply to the present case.

Because there being no specific quantity or measurement of land in the Titles of the Nuns, they might, it is granted, be bounded in general terms by the river St. Lawrence, and yet, as it has already been decided by Courts of Justice, be perfectly unfounded in their claim to the beach; the right of *ownership* as to this latter portion of property being the only question in issue in the cause, and the only one in dispute between the Crown and the Nuns.

The Inspector General, whose attention, from the extracts furnished in the Report of the Honorable Committee, has evidently been directed to one principal consideration in this matter, namely, *that of the proprietorship* of the Beach between high and low-water mark, the only point really in contestation between the parties, makes in his Report (without entering into an absolute investigation of the Deeds of the Nuns, which it was not his object to do) the reflection or remark that, upon inspection of the older titles, it appeared to him that the original grants gave the boundary "*le coteau du fleuve*," i. e. it must be presumed, in french "*borne au sud par le coteau du fleuve*." In taking, therefore, this supposition or assumption to be true, the result must be the very reverse of the conclusion come to by the Honorable Committee; because, as no portion of the property extended below high-water mark, the Cliff as a consequence, must have belonged to the Crown, inasmuch as that by which a thing is bounded forms no part of the thing itself—and therefore the remark, in this respect, of the Honorable Committee, is neither conclusive in reason nor in point of applicability.

The next observation made in the Report of the Honorable Committee upon the reports of the Inspector General, (taking them in their order,) is the question of alluvion,

and which, seemingly, in a legal point of view, has been partially enquired into by the Committee. The doctrine of alluvion is distinctly recognized both by the laws of England and France as that which is produced by *natural causes*, as where the waters have by natural events left permanently dry the land or soil they at one time covered, never to return, and not that which is produced by artificial causes, as by the erecting of wharves and embankments on navigable rivers in which there is a flow and ebb of the tide, (*vide* in the present case,) and which in themselves, without the especial authority and licence of the Crown, constitute an encroachment on the Royal Domain. The strip above the blue line in Saxe's plan, never was supposed to have been produced by alluvion, or claimed as such—on the contrary, it is positively sworn to as having been caused by the wharves and embankments in question.

In regard again of another remark made by the Honorable Committee, in commenting upon the Report of the Inspector General, in alluding to the road of fifteen or twenty toises, it is submitted that the Committee are in error in viewing the same in the light of a servitude; such cannot be construed or considered as a servitude reserved upon the land granted, but as a reserve of the *land* to that extent above high-water mark, and that the road was to be the boundary: in French—“*le chemin entre d'eux* ;” in English—the road reserved to intervene between the ridge or summit of the cliff and the land conceded.

In respect of the last observation made by the Honorable Committee, relative to the opinion of Her Majesty's Inspector General as to the *droit de pêche*, or supposed right of fishing becoming extinguished through lapse of time by *non user*, it is here contended that such remark is perfectly correct and one admitting of no difficulty; inasmuch as the same is undoubtedly subject to peremption like other similar rights. But the reasonableness of this opinion, apart from its legality, particularly when the circumstances of the case are also taken into consideration, must be undeniable;—as instance, in support of this assertion, the absurdity and impracticability of the Nuns, or their representatives, exercising at this time a supposed right of fishing in the harbour of Quebec in the river St. Lawrence, in Her Majesty's great navigable highway of trade and commerce, and which these parties never at any time used or contemplated using.

The argument of the Honorable Committee, as made in their Report in favour of the Nuns and their Titles, and the conclusions arrived at by the Committee, have been already signally decided in a case where, however, (not as in the present instance) Riparian rights might be considered as really at issue—namely, in the case of the Seminary proprietors of the *fief* Coulonge, with the Honorable Matthew Bell and William Sheppard. In this transaction, which occurred some time in the latter end of the year 1827, or the commencement of 1828, the Crown granted Letters Patent to Bell and Sheppard for deep water lots in front of *fief* Coulonge; although a most forcible remonstrance was presented to Government on behalf of the Gentlemen of the Seminary, establishing by their Titles, that they had, as Seigneurs of the *Fief*, exclusive claim to the right of fishing (*droit de pêche*,) being furthermore proprietors down to low-water mark, and the same granted to them direct from the French Government. Her Majesty's Government, nevertheless, accorded Letters Patent to Messrs. Bell and Sheppard, the nature and value of the property being in this manner entirely changed; and would not recognize the pretensions of the Gentlemen of the Seminary, as contended for by them in their Remonstrance.*

The Claims, on the other hand, of Mr. Laporte upon Government, as an original discoverer, in giving information which has proved of such service and importance to the Crown, and he being the personal instrument by which such large and valuable accessions and additions have been made to the Royal Domain, unquestionably entitle him in

* Numerous cases have since 1827 been brought before the Court of King's Bench for the District of Quebec, in which rights, much similar to the pretended claims of the Representative of the Nuns, were asserted, and in which the Nuns of the Hotel Dieu and the Crown had an interest, these individuals not original discoverers, and from whose improvements no public benefit was derived, they being purely for personal and mercantile purposes, erected wharves and embankments upon the Beach of the River St. Charles, yet they never were deprived of possession, but enjoy the same in virtue of Letters Patent, peaceably, to this day, as instance of the number of these suits:—Hotel Dieu vs. John Anderson; Idem vs. John Bell; Idem vs. Pozzer; and the Crown vs. McCallum.

that character alone to an equitable consideration, and a preference to all others, and which rule has been invariably followed and acted upon, and is in usage in England. But how will the claims of Laporte appear in a more forcible view, when, independent of the discovery in question, it is considered that the improvements made by him during possession were not merely personal betterments, liable to be surrendered up at the expiration of a lease, but were substantially improvements on a large scale—namely, the opening at his own individual cost, of a road for public benefit, and since advantageously used by the mercantile community and all classes of Her Majesty's subjects, without at the same time any great benefit accruing, or encouragement being given to Laporte the original discoverer and liberal undertaker.

The Honorable Committee are of opinion, in reference to the purchase made of the beach-lot in question by the Messrs. Frasers, in the face of a Judgment declaring the same to be the property of the Crown, that, if the Ursuline Nuns, or their representatives, committed an error, the Government of Lower Canada did precisely the same thing, by ordering a lease to Laporte during the pendency of the Appeal,—but the two circumstances widely differ, and will not admit of a comparative application. The Act of Government in this respect being perfectly justifiable, a lease being merely ordered (not executed) of property declared to be, in virtue of a legal decision, that of the Crown, an appeal made but apparently abandoned, having lain dormant at the time for six years and upwards, and which so remained for several years subsequent thereto. The act of the Messrs. Frasers, on the contrary, in the opinion of the Law and Courts of Justice, (and this opinion must prevail over all others,) as the purchasers of litigious rights, (*droits litigieux*),—and which rights, soon after the Judgment rendered in the Court of Appeals, they speculatively disposed of to the aforesaid William Lampson,—was one made in contravention of the expressed opinions of the law, and in the eye of the law regarded as the very acme of bad faith.*

The cases of Messrs. Bonner and Petry, and of James Reynar, quoted by the Honorable Committee as furnishing an instance in point in which the rights of the Ursuline Nuns have been recognized by the Government of Lower Canada, are not analogous or applicable to the present case. There the rights of the Crown as proprietor of the Beach were never questioned, or disputed by any party—and this fact, verifying the statement already made in a former part of this Remonstrance, that the real question at issue, the *ownership* of Beach-lots, was by the decision of the Court of King's Bench settled as being vested in the Crown, all further judicial contests as to the rights of Government to Beach-lots having ceased. Subsequently to this, however, as was done in the case above alluded to, amicable arrangements were entered into between purchasers of Beach-lots from Government and the Nuns, or their representatives; but in which, as in the present case, neither the interests, honour, good faith, or pledge of the Crown were either concerned or brought into question. The case of James Reynar was one in which, for speculative purposes, that individual leased his rights at a large annual rent, to Messrs. Bonner and Petry, for a term of years, the transaction being to him a profitable affair; and, at the expiration of his lease, he claimed compensation for his improvements at the hands of Government.

The case of James Reynar and that of J. B. Laporte, as regards their respective claims upon Government, do not stand in relative positions. The former never was regarded by Government in the light of an original discoverer,—the question of *ownership*, then decided as above stated, having left the Crown in the full and undisturbed enjoyment of Beach-lot property as situated within its domain. The claims of Laporte upon Government, arising from his peculiar case, and in his varied character of Tenant, Lessee, and the Vendee of Government, alike equitably and legally entitled him to every consideration from the Crown,—and so judged the Report in Council; whereas, none of these rights, or any claim approaching thereto, ever existed in support of the pretensions of the first mentioned individual to an indemnity from Government.

* It must be remembered that it was not the mere right of pre-emption which was sold by the Nuns to the Messrs. Frasers, and by the latter to Lampson, for speculative purposes, but a portion of the Royal Domain, the Beach Lot itself. In this manner openly setting at defiance all integrity for the rights of the Crown, and all respect for the decisions of the legal Tribunals of the country.

The Report of the Honorable Committee, after considering the claims of Mr. Laporte as those of a stranger,* proceeds to enquire "*How far the public faith and the honor of the Government may not stand pledged to Laporte, so as to render it imperative upon His Excellency, the Administrator in Chief of the Province, to sign a Patent in his favour.*" In discussing this question, one of grave and serious consideration, as well for Government as for all classes of Her Majesty's subjects in this country, similarly situated, the Honorable Committee Report as follows:—

"The application of Laporte, and the Order in Council in Lower Canada, are predicated upon the judgment of the Court of King's Bench, and the presumption that the Crown was the proprietor up to highwater mark. The judgment of the Court of Appeals, given subsequent to this order, and the titles and possession of the Nuns, prove this assumption to be erroneous. The law of the land is plain, that where a grant has been made in error, the Crown has been deceived, and the rights of one individual have been granted to his prejudice to another, that the Patent shall be repealed and set aside, even after it has been signed and sealed. In the present instance, the Patent not only has not issued, but the sale to Laporte is not complete, the ground has not been surveyed, nor its value ascertained—neither law nor justice can entitle Laporte to claim at the hands of Your Excellency, at this time, the execution of the Order in Council of Lower Canada, when, in consequence of subsequent occurrences, which however relate back to the time the order was made, the Government of Lower Canada would be compelled to cancel that order if that Government were still in existence. Laporte cannot, in the state in which the matter now stands, demand, consistently with fairness and honesty, a grant to him of what, contrary to his own statement, belongs to another.

"The pledge given to him ceased to be binding the moment that the condition upon which it was given ceased to exist, the Government intended to make him a grant of property belonging to the Crown, not of property belonging to the Nuns; and, in the opinion of the Committee, Laporte cannot compel Your Excellency to commit an injustice."

"When the subject at present under consideration, was brought to the notice of the Committee in May and in December, 1841, its difficulty suggested the expedience of making a grant to Laporte without guarantee of title, the Executive Council were conscious that legal difficulties encompassed the question, and were anxious that the Crown should be relieved from them."

How, indeed under the actual, and from what has already been premised, implied circumstances of Mr. Laporte's case, this individual, not only formally but virtually recognized during a period of sixteen consecutive years by the Crown, as its Tenant, Lessee, and Vendee, in a transaction which has reduced him, the only real sufferer, to a state of poverty, and (should his claims fail to meet with due and equitable consideration at the hands of the Crown,) utter ruin, is to be declared a stranger,—one unknown in this particular to Government, is indeed a statement furnishing not only food for conjecture but matter of surprise; particularly, when the opponents of the Crown now represented in the person of one William Lampson, (an alien by birth, and whose violent conduct, in these matters, has been severely animadverted on in the Report of the late Lord Sydenham)—are, as possessing the more legitimate rights and claims upon Government, to be preferred to Laporte, as the select purchaser of the beach lot in question.

It is evident, to make use of the language of the Report, that not only from the above quoted extracts have the Honorable Committee taken an altered view of the subject, but also in framing said Report have laboured under a misapprehension of the facts—whence a train of reasoning has been assumed, and followed throughout the Report in question, which causes the same in its conclusions to differ from all other reports hitherto made by the Executive Council of the country on the said subject.—How, otherwise, could

* The Honorable Committee in their Report have deemed it just and expedient to style Mr. Laporte a Common Informer as well as stranger. It would be well for the interests of Laporte were he considered as such, inasmuch as in Law he would be entitled to at least one-half of the value of the information given, and even in some instances to the whole. In the present case, however, his claims are unceremoniously and plausibly dismissed with great personal loss in lieu of equitable remuneration.

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the following statement be made, "that the application of Laporte, and the Order in Council in Lower Canada, were founded upon the judgment of the Court of King's Bench, and the assumption that the Crown was *the proprietor up to high-water mark*; and that the Judgment of the Court of Appeals, subsequent to such order, and the Titles and possession of the Nuns, proved this assumption to be erroneous." This assertion has already been proved to be incorrect, inasmuch as the decision of the Court of Appeals merely altered the line of high-water mark, but declared, as did the Judgment of the Court of King's Bench, that *up to high-water mark* the Crown was the proprietor of the Beach.

To quote further from the said Report, which states "The law of the land is plain, that where a grant has been made in error, the Crown has been deceived, or the rights of one individual have been granted to his prejudice to another, that the Patent shall be repealed, and set aside—even after it has been signed and sealed;" and also, "In the present instance, the Patent not only has not issued, but the sale to Laporte is not complete, the ground has not been surveyed, nor its value ascertained."

Is it, in the present case, that the term or charge of deception is applicable to Laporte?—was there any attempt on his part, in this transaction, to blindfold the Justice of Government, or to lead the Crown into error—even after the decision rendered by the Court of Appeals, so repeatedly referred to by the Honorable Committee, (although upon erroneous grounds,) as decisive of Laporte being entitled to no claim upon Government—was such at that period the opinion of the Crown on the subject? On the contrary, did not Her Majesty's Government, subsequently, and with a just respect for his rights, strengthen and confirm them by concluding with Laporte a sale of the said Beach lot, which sale (although this statement be the reverse of the assertion made in the Report of the Honorable Committee,) was not only *equitably* but *legally completed*; the ground not only *having been surveyed*, and its value ascertained, but the purchase money also—made ready for payment to the Crown, although the same, to the damage of Laporte, has since remained in an unproductive state.* The only case, it is suggested, in which the Crown would, or could, consistently, withdraw its promise, or retract its pledge, given to one of Her Majesty's subjects, must be where the conduct of the latter in the transaction has been characterized by flagrant turpitude, and an entire want of good faith—which, unquestionably, is not the position occupied by Mr. Laporte in his dealings in the present case with the Crown.

The Honorable Committee, in their Report, declare "That neither law nor justice can entitle J. B. Laporte, in their opinion, to his claims upon Government; and that he, Laporte, cannot at the present time, consistent with fairness and honesty, demand a grant to him of what, contrary to his statement, belongs to another."—"That the pledge given to him ceased to be binding, the moment that the condition upon which it was given ceased to exist, that the Government intended to make him a grant of property belonging to the Crown, and not of property belonging to the Nuns, and that, in the opinion of the Committee, Laporte cannot compel the Crown to commit an injustice."

It has, it is presumed, been already shown, that in consequence of the erroneous statement, made in the present Report, of the facts relative to the decision of the Court of Appeals, have the Honorable Committee pursued a course of reasoning not at all applicable to the case under consideration, and which alone can account for the assertions above quoted, as also for the opinions therein expressed, and which, obviously, if acted upon would really, under the existing circumstances of the affair, operate as a denial of all justice to the claims of Laporte.

The Honorable Committee, in bringing their elaborate Report to a close, are pleased to remark "that the subject, then under their consideration, was brought to the notice of the Committee in the months of May and December, 1841, and that its difficulty suggested the expedience of making a grant to Laporte, without guarantee of Title; the Executive

* The amount of purchase money, £2100 Cy. having been deposited in a Bank at Quebec, since the summer of 1842, remains there to the present day in an unproductive state, waiting the delivery of the Letters Patent at the hands of the Crown.

" Council being conscious that legal difficulty encompassed the question,"—and then, in conclusion, recommend, so as to ensure justice to all parties, "that the Beach-lot in question be set up at public sale, after due notice, and that the Nuns, as Riparian proprietors, be reserved the right of taking the property within twenty-four hours after the sale, at the rate offered by the highest bidder."

If the first mentioned remark is intended to show that, at that period, the Executive Council of the country contemplated that the rights of the Crown were in legal danger, the remark is not in place; inasmuch as the grant then ordered was in a spirit of justice so made, not only in regard to Laporte's peculiar situation during this protracted transaction, but also for the purpose of ratifying in good faith the engagements of Government to him, so far as it lay in the power of the Crown so to do; he, Laporte, having the option reserved to him of continuing the contestation at his own disposition and expense.*

The expediency, in the opinion of the Honorable Committee, of setting up the property in question to the highest bidder, and of reserving the right to the party representing the Nuns of taking the same at the amount of the purchase price, must undoubtedly preclude Mr. Laporte and all others from becoming vendees.—This proceeding, if acted upon, completely foreclosing him from the exercise of all claim upon Government, and all opportunity of retrieving his losses. The opposite party, by such an act, becoming proprietors of the improvements made by Laporte during the pendency of this long and tediously procrastinated business, the same having been made in a spirit of perfect reliance upon the pledge and good faith of Government; and upon the strength of which Laporte has, and still retains possession of the said property at great annual cost, and in opposition to the violent and forcible attempts of William Lampson to dispossess him, Laporte, thereof. The representatives of the Nuns themselves, formerly the fierce opponents, lately, the humble supplicants of the Crown, and, at the present time, the vindictive adversaries of the rights of Laporte, would not, in their ingenious Petition to the Executive, hazard a claim of preference to the latter, without first proposing the conciliatory and plausible offer of compensation being made to him for his improvements, but which the Crown then honourably and judiciously rejected, as incompatible with its engagements to Laporte.

The consideration, in a legal point of view, of the creation of a tenure so *novel* and *unique* in this or, perhaps, any other country, as the one proposed by the Honorable Committee—namely, that of the *Droit de Retrait*, to be exercised by William Lampson, the representative of the Nuns, upon property held *in free and common socage*, the same situate within the domain of the Crown, is, as regards the dignity of the latter, in its nature so preposterous, and of so humiliating a character and tendency, (Government being, heretofore, always considered the sole *seigneur* of the Royal domain, enjoying, possessing, and disposing of all property therein situate, free from all seigniorial claims and drawbacks of every species and description, *Droit de Retrait* or otherwise,) as to cause a regret that the expediency of such a measure, so as to ensure justice to all parties, should have been recommended at all by the Honorable Committee in the present Report.†

It must be conceded, upon an examination of this last executed Report, that not only has every demonstration of respect been shown in the same to the pretensions of the legal opponents of the Crown, but, under the real circumstances of the case, the inference is presumptive that the most favorable interpretation, as a measure of expediency, has been given to their claims, and this carried out to such an extreme point as not to be found in any other of the numerous Reports of the Executive Council on the subject, and to receive which gift at the hands of the Crown they are not, it is confidently asserted, either equitably or justly entitled.

* The appeal to the Queen and Privy Council by the Frasers was, for reasons best known to themselves, never carried into effect, the Committee therefore which framed the Report of December, 1841, the appeal alluded to having ceased to exist, could not in any way be governed by such a move on the part of the opponents of the Crown. The cross appeal made by Government for the benefit of Laporte in this case was also discontinued, leaving the Beach as property situate within the Domain of the Crown.

† The right of preemption is an application of the old system of *retrait* in the French law, which existed solely for the purpose of preventing fraud in private sales, to the detriment of the *seigneur's* rights, by a concealment of the real amount of the purchase money.

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The unquestionably well-founded claims of Mr. J. B. Laporte upon Government, exhibited in a series of transactions which originally commenced in the year 1827, and which were finally completed in perfect good faith by a sale of the property alluded to, by the Crown to the above-named individual, (the three essentials recognized in law to form a binding contract of this description, that is *the price agreed upon, the object of purchase, and the consent of parties* having been all effectively made, so as to render the same legally complete and perfect in every respect,) have, however, prejudicially to Laporte, being considered by the Honorable Committee as a sealed letter,—as acts no ways binding upon Government, and in which neither the public faith nor the honor of the Crown is in anywise concerned or brought into question.

The Honorable Committee in their Report, it is respectfully submitted, although no new matter or fact has by their enquiries been developed, either to weaken the claim of Laporte upon Government, or to vary in any respect the real question, thereby causing it to differ from all other Reports of the Province on the same subject, evince, in their consideration of the question, not only a desire to hold out to the opponents of Government a *premium* for encroachments, made in bad faith upon the domain of the Crown,—for judicial contests wilfully prolonged, without right or justice on their side, but (under circumstances) also advise the *equitable* expediency of Government cancelling its solemn engagements with Laporte. This, certainly, would be an act overheaping the measure of justice; and which would, indisputably, entitle such Report to rank unparalled as a public document in the records of the country.

It is furthermore observed that, inasmuch as the Report of the Honorable Committee has (regard had to the position of the parties before Government at the time) been not only premature in its birth and adoption, but as the same would evidently, from its manifold errors and discrepancies, also compromise the honor, dignity, and justice of the Crown, it is humbly suggested that these circumstances alone, were there none other, unquestionably warrant His Excellency, the Administrator in Chief of the Province at this time, not only in ordering a revision and reconsideration, in a Committee of the whole Council, of the merits of the Report in question; but also, by a transmission of the documents for the Home Government, effectually to refer the whole case, in its present state, to the consideration and decision of Her Majesty's Secretary of State.*

In taking a retrospective, but impartial and rational, view of past occurrences, and of the whole proceedings in connection with the entire transaction between the Crown and Laporte, it becomes necessary, as weighty matter of consideration and serious deliberation, with Government, in the present stage of the question, and *at this period* to decide—

Firstly—Whether the original understanding, commenced and entered into between Government and Laporte in 1827, and honorably and faithfully maintained by both parties, during a consecutive period of sixteen years, and in the course of which, and at the instance of the Crown, and to the satisfaction of Laporte, agreements of the most binding character have been made and completed, is or is not, as an act and measure of Justice to Laporte, to be now recognized and ratified by the Crown.

Secondly.—Whether the various and recorded Reports of the Executive Council of the Province, framed upon the written opinions of the Law Officers of the Crown, in the persons of Her Majesty's Attorney General and Inspector General on this subject, and effectively borne out and maintained by the decisions of the legal tribunals of the country,

* Subsequent to the address of the House of Assembly, based upon the Petition of the Ursuline Nuns, to the late Sir Charles Bagot, requesting that no grant of Letters Patent for the Beach lot at *L'anse des Meules* should be made, Mr. Laporte, through his agent, the latter having remained in Kingston for several months in the autumn of 1842, for the express purpose of ascertaining whether Letters Patent would issue or not, was informed that no further steps would or could possibly be taken before the next sitting of the Legislature. Mr. Laporte, placing implicit confidence in the good faith of this statement, coming as it did from Executive authority, remained in the interim inactive; when to his great surprise and without further intimation, he was informed by his agent, that the present Report was made, and for the reception of which he was wholly unprepared. His Excellency Sir Charles Metcalfe, the present Administrator in Chief of the Province, having but lately assumed the reins of Government in the country, could not possibly have possessed a true knowledge either of the actual facts or the real merits of the case.

are, or are not, at the present time, to be considered as solemn declarations of public faith, imperatively requiring and binding Government to complete its voluntary engagements with Laporte ; or are to be viewed and treated as documents of no import, wholly nugatory, both in spirit and in letter, and embodying no pledge or act in which the unspotted faith and unsullied honour of the Crown stands in danger of being irreparably compromised ?

Thirdly.—Whether the contract of sale made by the Crown upon its own terms and conditions to Laporte, the same essentially and formally complete both in legal character and effect, is now upon the broad and even basis of equity to be denied and refused him ; and let it then be asked, in virtue of what given principle of law or justice could such measure be rendered justifiable ? Or, is the Government of the country honourably repudiating all subservient motives and purposes, now prepared by one act of magnanimity to redeem its pledge, and grant to an humble but loyal subject of Her Majesty, a due, full, and final confirmation of his rights ?

In the concluding part of this Remonstrance, would Mr. Laporte, by an earnest and direct appeal to the justice of Her Majesty's Government, as representing in his person the acknowledged rights of the party who, in the whole course of these procrastinated proceedings, has been individually, and virtually recognized by the Crown as justly entitled to an equitable preference, humbly solicit that the Government, in the gracious exercise of its good faith, and the honorable redemption of its pledge, confirm, by a delivery of Her Majesty's Letters Patent to Laporte, the concession and permanent grant already made him of the property in question.

Finally, in the respectful but firm assertion of his rights and claims upon Government, Mr. Laporte, in virtue of the present Remonstrance, enters his humble and most solemn protest against any act or measure on the part of the Crown, which would rescind the contract of sale legally made to him by Her Majesty's Government upon his acceptance at a fixed valuation of the Beach lot situate at *L'anse des Meres*, within the Royal Domain, or which would deprive him, in his character of Vendee, of the occupation and possession of the property in question, and which he has retained for a long period of time, and still retains by and under favour of the Crown.

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